

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-03-LA-144
	)	
Sunbelt Television, Inc.	)	NAL/Acct. No.200432900005
Licensee of KHIZ(TV)	)	FRN 0007940810
Victorville, California	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: April 12, 2004**

By the District Director, Los Angeles Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Sunbelt Television, Inc. (“Sunbelt”), licensee of TV broadcast station KHIZ(TV), Victorville, California, has apparently repeatedly violated Sections 11.35(a) and 11.61(a)(1) of the Commission's Rules (“Rules”)<sup>1</sup> by failing to conduct required monthly Emergency Alert System (“EAS”) tests and failing to determine the cause of failures to receive required EAS tests. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”)<sup>2</sup>, that Sunbelt is apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000).

**II. BACKGROUND**

2. On April 15, 2003, an agent from the FCC Enforcement Bureau’s Los Angeles Office inspected TV broadcast station KHIZ(TV) located at 15605 Village Drive, Victorville, CA. During the course of the inspection, it was revealed that station KHIZ(TV) failed to transmit the required monthly EAS tests on three separate occasions over a four month period. A review of the station log for the period January 2, 2003 through April 15, 2003, revealed that station KHIZ(TV) had not transmitted the required monthly EAS tests for the months of January 2003, March 2003 and April 2003. There were no entries in the station log to indicate any problem or malfunction of the EAS equipment or entries specifying any particular reasons for the failure of the EAS apparatus to receive test transmissions as required by Sections 11.35(a) and 11.61(a)(1) of the Rules. The station’s Chief of Master Control stated that he was unaware that the station was not transmitting the required monthly EAS tests and had no explanation as to why the tests were not being transmitted or the specific months of non-transmission.

**III. DISCUSSION**

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or any rule, regulation or order issued by the Commission there under,

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<sup>1</sup> 47 C.F.R. § 11.35(a) and 11.61(a)(1).

shall be liable for a forfeiture penalty.<sup>2</sup> The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term “repeated” means the commission or omission of the act more than once or for more than one day.<sup>3</sup>

4. The Rules provide that every TV broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.<sup>4</sup> The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.<sup>5</sup> State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.<sup>6</sup> Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station.<sup>7</sup>

5. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and attention signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station’s log why any required tests were not received and when defective equipment is removed and restored to service.<sup>8</sup> Section 11.61 of the Rules requires TV stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.<sup>9</sup> The requirement that stations monitor, receive and retransmit the required EAS tests ensures the operational integrity of the EAS system in the event of an actual disaster.

6. A comprehensive review of the station log for the period beginning January 2, 2003 through

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<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: “[t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>4</sup> 47 C.F.R. §§ 11.11 and 11.41.

<sup>5</sup> 47 C.F.R. §§ 11.1 and 11.21.

<sup>6</sup> 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

<sup>7</sup> *See* 47 C.F.R. §§ 11.51, 11.61. *See also, Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (Effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt).

<sup>8</sup> 47 C.F.R. § 11.35(a) and (b).

<sup>9</sup> The required monthly and weekly tests are required to conform to the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt).

April 15, 2003, revealed that Sunbelt was not transmitting the required monthly EAS tests in a consistent manner and on a regular basis. Furthermore, there were no entries in the station's log to indicate any problem or malfunction of the EAS equipment or entries specifying any particular reasons for the failure of the EAS apparatus to receive test transmissions as required by Sections 11.35(a) and 11.61(a)(1) of the Rules. Based on the evidence before us, we find Sunbelt repeatedly violated Sections 11.35(a) and 11.61(a)(1) of the Rules by failing to conduct required monthly EAS tests and failing to determine the cause of failures to receive required monthly EAS tests.

7. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")* and Section 1.80(b)(4) of the Rules sets forth the base forfeiture amounts for various violations of the Commission's Rules. The Rules do not establish a base forfeiture amount for violating the Commission's rules requiring EAS tests. Therefore, we must determine an appropriate forfeiture amount for this violation.<sup>10</sup> The requirement that broadcast stations conduct EAS tests is similar in both nature and severity to other required operational performance checks identified in the Rules as required measurements or required monitoring. Section 1.80(b)(4) of the Rules sets the base forfeiture amount at \$2,000 for failure to make required measurements or conduct required monitoring. Therefore, we will assess the base forfeiture for failing to conduct EAS tests in the amount of \$2000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, and any history of prior offenses, ability to pay, and other such matters as justice may require."<sup>11</sup> Considering the entire record and applying the factors listed above, a \$2000 forfeiture is warranted for station KHIZ(TV).

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules, Sunbelt Television, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for repeated violation of Sections 11.35(a) and 11.61(a)(1) of the Rules by failing to conduct required monthly EAS tests.<sup>12</sup>

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Sunbelt Television, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must

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<sup>10</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4). The *Forfeiture Policy Statement* states that "...any omission of a specific rule violation from the...[forfeiture guidelines]...should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the Forfeiture Policy Statement and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

<sup>11</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>12</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35(a) and 11.61(a)(1).

include the FCC Registration Number(FRN) and the NAL/Acct. No. referenced in the caption.

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street S.W., Washington DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>13</sup>

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Sunbelt Television, Inc., 15605 Village Drive, Victorville, California 92393.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton  
District Director, Los Angeles Office  
Enforcement Bureau

Enclosure: FCC List of Small Entities

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<sup>13</sup> See 47 C.F.R. § 1.1914